

Appl. No. 10/601,351  
Amdt. dated July 19, 2004  
Reply to Office Action of April 19, 2004

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**REMARKS/ARGUMENTS**

The office action requested that the Applicant confirm the election of Group II. The Applicant confirms the election of Group II for prosecution with traverse.

Claims 14-30 were pending in this application. Claims 14-19 are withdrawn from consideration. Claims 20, 21 and 24 have been amended. Claim 25 has been cancelled. No claims have been added. Hence, claims 20-24 and 26-30 are present for examination. Reconsideration of the subject application as amended is respectfully requested.

The office action objected to the drawings for failing to show "trace T" in Figure 8. Paragraph 52 of the specification has been amended to change "trace T" to "trace C," which is shown in Figure 8. Thus, the Applicant believes this amendment overcomes the objection.

The office action objected to the disclosure for failing to teach how the gate and drains of the transistors are formed in the same layer and a second layer of metallization interconnecting a plurality of MACROs. The claims have been amended to remove the limitation relating to forming a gate and drains in the same layer. The support for interconnecting a plurality of MARCOs in a second layer of metallization may be found at paragraph 2. Thus, the Applicant believes the objection has been overcome.

Claims 20-30 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement relating to the limitation of forming the drains in the same layer as a gate. The claims have been amended to remove the limitation as suggested by the examiner. Thus, the Applicant believes that the amendment overcomes the rejection.

Claims 24-30 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement relating to the limitation of a second layer of metallization interconnecting a plurality of MACROs. The support may be found at paragraph 2. Thus, the Applicant believes the rejection has been overcome.

Claims 20-30 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The claims have been amended to overcome this rejection.

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Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the cited portions of U.S. Patent No. 4,482,810 to Cooke, *et al.* (hereinafter "Cooke"), and further in view of the cited portions of U.S. Patent No. 5,168,072 to Moslehi, *et al.* (hereinafter "Moslehi"). Claim 20 has been amended to include the subject matter of claim 25, which the Applicant believes is patentable for the reasons stated below.

Claims 22-24 and 26-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cooke in view of Moslehi and further in view of the cited portions of U.S. Patent No. 3,808,475 to Buelow, *et al.* (hereinafter "Buelow"). These rejections are addressed below.

Claims 29-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cooke, Moslehi, and Buelow and further in view of the cited portions of U.S. Patent No. 5,313,079 to Brasen, *et al.* (hereinafter "Brasen"). These rejections are addressed below.

Claim Rejections Under 35 U.S.C. § 103(a)

The Applicant respectfully traverses the rejection of all claims because the office action has not established a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

(MPEP § 2143) Here, the office action has not met all three criteria. Specifically, the office action has not shown that the prior art teaches or suggests all the claim limitations, and the office action does not cite a reference that teaches or suggests a motivation to combine reference teachings.

With respect to the third prong of the test, the office action has not shown that the prior art teaches or suggests all the limitations of claim 20 (which has been amended to include subject matter previously examined in claim 25). Specifically, claim 20 now recites "a connection between a drain of the p-channel field effect transistor and a drain of the n-channel field effect transistor formed in said same layer of polysilicon" as the gate. In rejecting this

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subject matter in claim 25, the office action states that Cooke teaches a trace connecting a drain of a p-channel field effect transistor and a drain of a n-channel field effect transistor but fails to teach that the trace is formed in polysilicon. Without citing a reference, the office action states that it would have been obvious to form the trace in polysilicon "since it has been held to be within the general skill of a worker in the art to select a known material on its suitability for its intended use." Even if true, this fails to address the full scope of the claim limitations.

Specifically, combining all the assertions of the office action, the assertions fail to address that the polysilicon in which the trace is formed is the same layer in which a gate is formed. Thus, the office action has not established a *prima facie* case of obviousness with respect to this prong of the test and claim 20 is believed to be allowable, at least for this reason.

Further, the office action appears to be relying on facts within the personal knowledge of the Examiner to state that forming the trace in the same layer of polysilicon as a gate would have been obvious to one of ordinary skill in the art. The Applicant notes that

[t]he examiner may take official notice of facts outside the record which are capable of instant and unquestionable demonstration as being well-known in the art. ... If justified, the examiner should not be obliged to spend time to produce documentary proof. If the knowledge is of such notorious character that official notice can be taken, it is sufficient so to state. ... If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position.

When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts **must be supported, when called for by the applicant, by an affidavit from the examiner.**

MPEP § 2144.03, emphasis added, citing 37 CFR §1.104(d)(2)) Thus, the Applicant respectfully traverses the rejection and requests either an express showing of documentary proof, or an affidavit specifically stating the facts within the personal knowledge of the Examiner, as required by 37 CFR §1.104(d)(2), supporting the assertion that it would have been obvious to one skilled in the art to form a trace between drains of two transistors in the same layer of polysilicon as a gate. Thus, the Applicant believes claim 20 is allowable for this additional reason.

The remaining claims depend either directly or indirectly from claim 20 and are believed to be allowable, at least for the reasons stated above. Additionally, however, the Applicant respectfully traverses the rejections of all claims since the office action does not cite a

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reference in the prior art that provides the necessary motivation or suggestion to combine the teachings of Cooke with those of Moslehi, Buelow, and/or Brasen to achieve the Applicant's claimed invention. The Applicants note that,

[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

(MPEP § 2143.01) Because no reference is cited that provides the teaching, suggestion, or motivation to combine the references, the Applicant assumes the office action is relying on facts within the personal knowledge of the Examiner that one of ordinary skill in the art would be motivated to combine the references. The Applicant, therefore, respectfully traverses the rejections and requests either an express showing of documentary proof, or an affidavit specifically stating the facts within the personal knowledge of the Examiner, as required by 37 CFR §1.104(d)(2), supporting the assertion that one skilled in the art would be motivated to combine the references in each case. Without this showing, the Applicant believes that all claims are allowable for this additional reason for failing to establish a *prima facie* case of obviousness with respect to this prong of the test.

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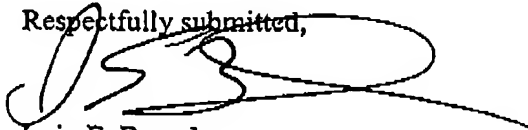
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**CONCLUSION**

In view of the foregoing, the Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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